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withholding exemption is in doubt. Therefore, W has reason to know that the eligibility of the compensation for a withholding exemption cannot be readily determined, as of the date W receives the notification, and W must withhold tax under section 1441 on amounts paid after receipt of the notification.

Example 3. E, a nonresident alien individual, submits Form 8233 to W, a withholding agent for whom E is to perform personal services. The statement contains all the information requested on Form 8233. E claims an exemption from withholding based on a personal exemption amount computed on the number of days E will perform personal services for W in the United States. If W does not know or have reason to know that any statement on the Form 8233 is false or that the eligibility of E's compensation for the withholding exemption cannot be readily determined, W can accept the statement on Form 8233 and exempt from withholding the appropriate amount of E's income.

(iv) [Reserved] For further guidance, see § 1.1441-4(b)(2)(iv).

(v) *Copies of Form 8233.* The withholding agent shall forward one copy of each Form 8233 that is accepted under paragraph (b)(2)(iv) of this section to the IRS within five days of such acceptance. The withholding agent shall retain a copy of Form 8233.

(3) *Withholding agreements.* Compensation for personal services of a nonresident alien individual who is engaged during the taxable year in the conduct of a trade or business within the United States may be wholly or partially exempted from the withholding required by § 1.1441-1 if an agreement is reached between the IRS and the alien individual with respect to the amount of withholding required. Such agreement shall be available in the circumstances and in the manner set forth by the Internal Revenue Service, and shall be effective for payments covered by the agreement that are made after the agreement is executed by all parties. The alien individual must agree to timely file an income tax return for the current taxable year.

(b)(4) through (g)(2) [Reserved] For further guidance, see § 1.1441-4(b)(4) through (g)(2).

(g)(3) *Effective/applicability date.* This section applies to payments made after June 30, 2014. (For payments made after December 31, 2000, see this section

as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(h) *Expiration date.* The applicability of this section expires on February 28, 2017.

[T.D. 9658, 79 FR 12774, Mar. 6, 2014]

§ 1.1441-5 Withholding on payments to partnerships, trusts, and estates.

(a) *In general.* This section describes the rules that apply to payments made to partnerships, trusts, and estates. Paragraph (b) of this section prescribes the rules that apply to a withholding agent making a payment to a U.S. partnership, trust, or estate. It also prescribes the obligations of a U.S. partnership, trust, or estate that makes a payment to a foreign partner, beneficiary, or owner. Paragraph (c) of this section prescribes rules that apply to a withholding agent that makes a payment to a foreign partnership. Paragraph (d) of this section provides presumption rules that apply to payments made to foreign partnerships. Paragraph (e) of this section prescribes rules, including presumption rules, that apply to a withholding agent that makes a payment to a foreign trust or foreign estate.

(b) *Rules applicable to U.S. partnerships, trusts, and estates—*(1) *Payments to U.S. partnerships, trusts, and estates.* No withholding is required under section 1.1441-1(b)(1) on a payment of an amount subject to withholding (as defined in § 1.1441-2(a)) that a withholding agent may treat as made to a U.S. payee. Therefore, if a withholding agent can reliably associate (within the meaning of § 1.1441-2(b)(vii)) a Form W-9 provided in accordance with § 1.1441-1(d)(2) or (4) by a U.S. partnership, U.S. trust, or a U.S. estate the withholding agent may treat the payment as made to a U.S. payee and the payment is not subject to withholding under section 1441 even though the partnership, trust, or estate may have foreign partners, beneficiaries, or owners. A withholding agent is also not required to withhold under section 1441 on a payment it makes to an entity presumed to be a U.S. payee under paragraphs (d)(2) and (e)(6)(ii) of this section.

(2) *Withholding by U.S. payees—*(i) *U.S. partnerships—*(A) *In general.* A U.S.

partnership is required to withhold under § 1.1441-1 as a withholding agent on an amount subject to withholding (as defined in § 1.1441-2(a)) that is includible in the gross income of a partner that is a foreign person. Subject to paragraph (b)(2)(v) of this section, a U.S. partnership shall withhold when any distributions that include amounts subject to withholding (including guaranteed payments made by a U.S. partnership) are made. To the extent a foreign partner's distributive share of income subject to withholding has not actually been distributed to the foreign partner, the U.S. partnership must withhold on the foreign partner's distributive share of the income on the earlier of the date that the statement required under section 6031(b) is mailed or otherwise provided to the partner or the due date for furnishing the statement.

(B) *Effectively connected income of partners.* Withholding on items of income that are effectively connected income in the hands of the partners who are foreign persons is governed by section 1446 and not by this section. In such a case, partners in a domestic partnership are not required to furnish a withholding certificate in order to claim an exemption from withholding under section 1441(c)(1) and § 1.1441-4.

(ii) *U.S. simple trusts.* A U.S. trust that is described in section 651(a) (a U.S. simple trust) is required to withhold under chapter 3 of the Internal Revenue Code as a withholding agent on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income is an amount subject to withholding (as defined in § 1.1441-2(a)). A U.S. simple trust shall withhold when a distribution is made to a foreign beneficiary. The U.S. trust may make a reasonable estimate of the portion of the distribution that constitutes distributable net income consisting of an amount subject to withholding and apply the appropriate rate of withholding to the estimated amount. If, at the end of the taxable year in which the distribution is made, the U.S. simple trust determines that it underwithheld under section 1441 or 1442, the trust shall be liable as a withholding agent for the amount under

withheld under section 1461. No penalties shall be imposed for failure to withhold and deposit the tax if the U.S. simple trust's estimate was reasonable and the trust pays the underwithheld amount on or before the due date of Form 1042 under section 1461. Any payment of underwithheld amounts by the U.S. simple trust shall not be treated as income subject to additional withholding even if that amount is treated as additional income to the foreign beneficiary, unless the additional amount is income to the foreign beneficiary as a result of a contractual arrangement between the parties regarding the satisfaction of the foreign beneficiary's tax liability. To the extent a U.S. simple trust is required to, but does not, distribute such income to a foreign beneficiary, the U.S. trust must withhold on the foreign beneficiary's allocable share at the time the income is required (without extension) to be reported on Form 1042-S under § 1.1461-1(c).

(iii) [Reserved] For further guidance, see § 1.1441-5T(b)(2)(iii).

(iv) *U.S. grantor trusts.* A U.S. trust that is described in section 671 through 679 (a U.S. grantor trust) must withhold on any income includible in the gross income of a foreign person that is treated as an owner of the grantor trust to the extent the amount includible consists of an amount that is subject to withholding (as described in § 1.1441-2(a)). The withholding must occur at the time the income is received by, or credited to, the trust.

(v) *Subsequent distribution.* If a U.S. partnership or U.S. trust withholds on a foreign partner, beneficiary, or owner's share of an amount subject to withholding before the amount is actually distributed to the partner, beneficiary, or owner, withholding is not required when the amount is subsequently distributed.

(vi) [Reserved] For further guidance, see § 1.1441-5T(b)(2)(vi).

(c) *Foreign partnerships—(1) Determination of payee—*(i) [Reserved] For further guidance, see § 1.1441-5T(c)(1)(i).

(A) If the withholding agent can reliably associate a partner's distributive share of the payment with a valid Form W-9 provided under § 1.1441-1(d), the partner is a U.S. payee;

(B) If the withholding agent can reliably associate a partner's distributive share of the payment with a valid Form W-8, or other appropriate documentation, provided under § 1.1441-1(e)(1)(ii), the partner is a payee that is a foreign beneficial owner;

(C) [Reserved] For further guidance, see § 1.1441-5T(c)(1)(i)(C).

(D) If the withholding agent can reliably associate the partner's distributive share with a withholding foreign partnership certificate under paragraph (c)(2)(iv) of this section or a non-withholding foreign partnership certificate under paragraph (c)(3)(iii) of this section, then the rules of this paragraph (c)(1)(i) or paragraph (c)(1)(ii) of this section shall apply to determine whether the payment is treated as made to the partners of the higher-tier partnership under this paragraph (c)(1)(i) or to the higher-tier partnership itself (under the rules of paragraph (c)(1)(ii) of this section) in the same manner as if the partner's distributive share of the payment had been paid directly to the higher-tier foreign partnership;

(E) If the withholding agent can reliably associate the partner's distributive share with a withholding certificate described in paragraph (e) of this section regarding a foreign trust or estate, then the rules of paragraph (e) of this section shall apply to determine who the payees are; and

(F) If the withholding agent cannot reliably associate the partner's distributive share with a withholding certificate or other appropriate documentation, the partners are considered to be the payees and the presumptions described in paragraph (d)(3) of this section shall apply to determine their classification and status.

(ii) *Payments treated as made to the partnership.* A payment to a person that the withholding agent may treat as a foreign partnership is treated as a payment to the foreign partnership and not to its partners only if—

(A) The withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(2)(iv) of this section (withholding certificate of a withholding foreign partnership);

(B) The withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(3)(iii) of this section (nonwithholding foreign partnership) certifying that the payment is income that is effectively connected with the conduct of a trade or business in the United States; or

(C) The withholding agent can treat the income as effectively connected income under the presumption rules of § 1.1441-4(a)(2)(ii) or (3)(i).

(iii) *Rules for reliably associating a payment with documentation.* For rules regarding the reliable association of a payment with documentation, see § 1.1441-1(b)(2)(vii). In the absence of documentation, see §§ 1.1441-1(b)(3) and 1.6049-5(d) and paragraphs (d) and (e)(6) of this section for applicable presumptions.

(iv) and (v) [Reserved] For further guidance, see § 1.1441-5T(c)(1)(iv) and (v).

(2) *Withholding foreign partnerships—*(i) through (iii) [Reserved] For further guidance, see § 1.1441-5T(c)(2)(i) through (c)(2)(iii).

(iv) *Withholding certificate from a withholding foreign partnership.* The rules of § 1.1441-1(e)(4) shall apply to withholding certificates described in this paragraph (c)(2)(iv). A withholding certificate furnished by a withholding foreign partnership is valid with regard to any partner on whose behalf the certificate is furnished only if it is furnished on a Form W-8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a partner with authority to sign for the partnership, its validity has not expired, and it contains the information, statement, and certifications described in this paragraph (c)(2)(iv) as follows—

(A) and (B) [Reserved] For further guidance, see § 1.1441-5T(c)(2)(iv)(A) and (B).

(C) Any other information, certifications or statements as may be required by the withholding foreign partnership agreement with the IRS or the form or accompanying instructions in addition to, or in lieu of, the information, statements, and certifications described in this paragraph (c)(2)(iv).

(3) *Nonwithholding foreign partnerships*—(i) and (ii) [Reserved] For further guidance, see § 1.1441-5T(c)(3)(i) and (ii).

(iii) *Withholding certificate from a nonwithholding foreign partnership.* A nonwithholding foreign partnership shall provide a nonwithholding foreign partnership withholding certificate with respect to reportable amounts received by the nonwithholding foreign partnership. A nonwithholding foreign partnership withholding certificate is valid only to the extent it is furnished on a Form W-8 (or an acceptable substitute form or such other form as the IRS may prescribe), it is signed under penalties of perjury by a partner with authority to sign for the partnership, its validity has not expired, and it contains the information, statements, and certifications described in this paragraph (c)(3)(iii) and paragraph (c)(3)(iv) of this section, and the withholding certificates and other appropriate documentation for all the persons to whom the certificate relates are associated with the certificate. The rules of § 1.1441-1(e)(4) shall apply to withholding certificates described in this paragraph (c)(3)(iii). No withholding certificates or other appropriate documentation from persons who derive income through a partnership (whether or not U.S. exempt recipients) are required to be associated with the nonwithholding foreign partnership withholding certificate if the certificate is furnished solely for income claimed to be effectively connected with the conduct of a trade or business in the United States. Withholding certificates and other appropriate documentation that may be associated with the nonwithholding foreign partnership withholding certificate consist of beneficial owner withholding certificates under § 1.1441-1(e)(2)(i), intermediary withholding certificates under § 1.1441-1(e)(3)(i), withholding foreign partnership withholding certificates under paragraph (c)(2)(iv) of this section, nonwithholding foreign partnership withholding certificates under this paragraph (c)(3)(iii), withholding certificates from foreign trusts or estates under paragraph (e) of this section, documentary evidence described in § 1.1441-6(c)(3) or (4) or documentary

evidence described in § 1.6049-5(c)(1), and any other documentation or certificates applicable under other provisions of the Internal Revenue Code or regulations that certify or establish the status of the payee or beneficial owner as a U.S. or a foreign person. Nothing in this paragraph (c)(3)(iii) shall require a nonwithholding foreign partnership to furnish original documentation. Copies of certificates or documentary evidence may be transmitted to the U.S. withholding agent, in which case the nonwithholding foreign partnership must retain the original documentation for the same time period that the copy is required to be retained by the withholding agent under § 1.1441-1(e)(4)(iii) and must provide it to the withholding agent upon request. The information, statement, and certifications required on the withholding certificate are as follows—

(A) [Reserved] For further guidance, see § 1.1441-5T(c)(3)(iii)(A).

(B) A certification that the person whose name is on the certificate is a foreign partnership;

(C) A withholding statement associated with the nonwithholding foreign partnership withholding certificate that provides all of the information required by paragraph (c)(3)(iv) of this section and § 1.1441-1(e)(3)(iv). No withholding statement is required, however, for a nonwithholding foreign partnership withholding certificate furnished for income claimed to be effectively connected with the conduct of a trade or business in the United States;

(D) A certification that the income is effectively connected with the conduct of a trade or business in the United States, if applicable; and

(E) Any other information, certifications, or statements required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (c)(3)(iii).

(iv) and (v) [Reserved] For further guidance, see § 1.1441-5T(c)(3)(iv) and (v).

(d) *Presumption rules*—(1) *In general.* This paragraph (d) contains the applicable presumptions for a withholding agent (including a partnership) to determine the classification and status of

a partnership and its partners in the absence of documentation. The provisions of § 1.1441-1(b)(3)(iv) (regarding the 90-day grace period) and § 1.1441-1(b)(3)(vii) through (ix) shall apply for purposes of this paragraph (d).

(2) through (4) [Reserved] For further guidance, see § 1.1441-5T(d)(2) through (d)(4).

(e) *Foreign trusts and estates*—(1) *In general.* This paragraph (e) provides rules applicable to payments of amounts subject to withholding (as defined in § 1.1441-2(a)) that a withholding agent may treat as made to any foreign trust or a foreign estate. For rules relating to payments to a U.S. trust or a U.S. estate, see paragraph (b) of this section. For the definitions of foreign simple trust, foreign complex trust, and foreign grantor trust, see § 1.1441-1(c)(24), (25), and (26).

(2) *Payments to foreign complex trusts and foreign estates.* Under § 1.1441-1(c)(6)(ii)(D), a foreign complex trust or foreign estate is generally considered to be the beneficial owner of income paid to the foreign complex trust or foreign estate. See paragraph (e)(4) of this section for rules describing when a withholding agent may treat a payment as made to a foreign complex trust or a foreign estate.

(3) *Payees of payments to foreign simple trusts and foreign grantor trusts*—(i) *Payments for which beneficiaries and owners are payees.* For purposes of the regulations under chapters 3 and 61 of the Internal Revenue Code and section 3406, a foreign simple trust is not a beneficial owner or a payee of a payment. Also, a foreign grantor trust (or a portion of a trust that is a foreign grantor trust) is not considered a beneficial owner or a payee of a payment. Except as otherwise provided in paragraph (e)(3)(ii) of this section, the payees of a payment made to a person that the withholding agent may treat as a foreign simple trust or a foreign grantor trust (or a portion of a trust that is a foreign grantor trust) are determined under the rules of this paragraph (e)(3)(i). The payees shall be treated as the beneficial owners if they may be so treated under § 1.1441-1(c)(6)(ii)(C) and they provide documentation supporting their status as the beneficial owners. The payees of a payment to a foreign sim-

ple trust or foreign grantor trust are determined as follows—

(A) If the withholding agent can reliably associate a payment with a valid Form W-9 provided under § 1.1441-1(d) from a beneficiary or owner of the foreign trust, then the beneficiary or owner is a U.S. payee;

(B) If the withholding agent can reliably associate a payment with a valid Form W-8, or other appropriate documentation, provided under § 1.1441-1(e)(1)(ii) from a beneficiary or owner of the foreign trust, then the beneficiary or owner is a payee that is a foreign beneficial owner;

(C) If the withholding agent can reliably associate a payment with a qualified intermediary withholding certificate under § 1.1441-1(e)(3)(ii), a non-qualified intermediary withholding certificate under § 1.1441-1(e)(3)(ii), or a U.S. branch withholding certificate under § 1.1441-1(e)(3)(v), then the rules of § 1.1441-1(b)(2)(v) shall apply to determine the payee in the same manner as if the payment had been paid directly to such intermediary or U.S. branch;

(D) If the withholding agent can reliably associate a payment with a withholding foreign partnership withholding certificate under paragraph (c)(2)(iv) of this section or a nonwithholding foreign partnership withholding certificate under paragraph (c)(3)(iii) of this section, then the rules of paragraph (c)(1)(i) or (ii) of this section shall apply to determine the payee;

(E) If the withholding agent can reliably associate the payment with a foreign simple trust withholding certificate or a foreign grantor trust withholding certificate (both described in paragraph (e)(5)(iii) of this section) from a second or higher-tier foreign simple trust or foreign grantor trust, then the rules of this paragraph (e)(3)(i) or paragraph (e)(3)(ii) of this section shall apply to determine whether the payment is treated as made to a beneficiary or owner of the higher-tier trust or to the trust itself in the same manner as if the payment had been made directly to the higher-tier trust; and

(F) If the withholding agent cannot reliably associate a payment with a withholding certificate or other appropriate documentation, the payees shall

be determined by applying the presumptions described in paragraph (e)(6) of this section.

(ii) *Payments for which trust is payee.* A payment to a person that the withholding agent may treat as made to a foreign trust under paragraph (e)(5)(iii) of this section is treated as a payment to the trust, and not to a beneficiary of the trust, only if—

(A) The withholding agent can reliably associate the payment with a foreign complex trust withholding certificate under paragraph (e)(4) of this section;

(B) The withholding agent can reliably associate the payment with a foreign simple trust withholding certificate under paragraph (e)(5)(iii) of this section certifying that the payment is income that is treated as effectively connected with the conduct of a trade or business in the United States; or

(C) The withholding agent can treat the income as effectively connected income under the presumption rules of § 1.1441-4(a)(3)(i).

(iii) [Reserved] For further guidance, see § 1.1441-5T(e)(3)(iii).

(4) *Reliance on claim of foreign complex trust or foreign estate status.* A withholding agent may treat a payment as made to a foreign complex trust or a foreign estate if the withholding agent can reliably associate the payment with a beneficial owner withholding certificate described in § 1.1441-1(e)(2)(i) or other documentary evidence under § 1.1441-6(c)(3) or (4) (regarding a claim for treaty benefits) or § 1.6049-5(c)(1) (regarding documentary evidence to establish foreign status for purposes of chapter 61 of the Internal Revenue Code) that establishes the foreign complex trust or foreign estate's status as a beneficial owner. See paragraph (e)(6) of this section for presumption rules if documentation is lacking.

(5) *Foreign simple trust and foreign grantor trust—(i) and (ii)* [Reserved] For further guidance, see § 1.1441-5T(e)(5)(i) and (ii).

(iii) *Withholding certificate from foreign simple trust or foreign grantor trust.* A withholding certificate furnished by a foreign simple trust or a foreign grantor trust that is not a withholding foreign trust (within the meaning of paragraph (e)(5)(v) of this section) is

valid only if it is furnished on a Form W-8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a trustee, its validity has not expired, it contains the information, statements, and certifications required by this paragraph (e)(5)(iii) and § 1.1441-1(e)(3)(iv), and the withholding certificates or other appropriate documentation for all of the payees (as determined under paragraph (e)(3)(i) of this section) to whom the certificate relates are associated with the foreign simple trust or foreign grantor trust withholding certificate. The rules of § 1.1441-1(e)(4) shall apply to withholding certificates described in this paragraph (e)(5)(iii). No withholding certificates or other appropriate documentation from persons who derive income through a foreign simple trust or a foreign grantor trust (whether or not U.S. exempt recipients) are required to be associated with the foreign simple trust or foreign grantor trust withholding certificate if the certificate is furnished solely for income that is treated as effectively connected with the conduct of a trade or business in the United States. Withholding certificates and other appropriate documentation (as determined under paragraph (e)(3)(i) of this section) that may be associated with a foreign simple trust or foreign grantor trust withholding certificate consist of beneficial owner withholding certificates under § 1.1441-1(e)(2)(i), intermediary withholding certificates under § 1.1441-1(e)(3)(i), withholding foreign partnership withholding certificates under paragraph (c)(2)(iv) of this section, nonwithholding foreign partnership withholding certificates under paragraph (c)(3)(iii) of this section, withholding certificates from foreign trusts or estates under paragraph (e)(4) or (5)(iii) of this section, documentary evidence described in §§ 1.1441-6(c)(3) or (4), or 1.6049-5(c)(1), and any other documentation or certificates applicable under other provisions of the Internal Revenue Code or regulations that certify or establish the status of the payee or beneficial owner as a U.S. or a foreign person. Nothing in this paragraph (e)(5)(iii) shall require a foreign simple

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trust or foreign grantor trust to provide original documentation. Copies of certificates or documentary evidence may be passed up to the U.S. withholding agent, in which case the foreign simple trust or foreign grantor trust must retain the original documentation for the same time period that the copy is required to be retained by the withholding agent under §1.1441-1(e)(4)(iii) and must provide it to the withholding agent upon request. The information, statement, and certifications required on a foreign simple trust or foreign grantor trust withholding certificate are as follows—

(A) [Reserved] For further guidance, see §1.1441-5T(e)(5)(iii)(A).

(B) A certification that the person whose name is on the certificate is a foreign simple trust or a foreign grantor trust;

(C) A withholding statement associated with the foreign simple trust or foreign grantor trust withholding certificate that provides all of the information required by paragraph (e)(5)(iv) of this section. No withholding statement is required, however, for a foreign simple trust withholding certificate furnished for income that is treated as effectively connected with the conduct of a trade or business in the United States;

(D) A certification on a foreign simple trust withholding certificate that the income is treated as effectively connected with the conduct of a trade or business in the United States, if applicable; and

(E) Any other information, certifications, or statements required by the form or accompanying instructions in addition to, or in lieu of, the information, certifications, and statements described in this paragraph (e)(5)(iii);

(iv) and (v) [Reserved] For further guidance, see §1.1441-5T(e)(5)(iv) and (v).

(6) *Presumption rules*—(i) *In general.* This paragraph (e)(6) contains the applicable presumptions for a withholding agent (including a trust or estate) to determine the classification and status of a trust or estate and its beneficiaries or owners in the absence of valid documentation. The provisions of §1.1441-1(b)(3)(iv) (regarding the 90-day grace period) and §1.1441-

1(b)(3)(vii) through (ix) shall apply for purposes of this paragraph (e)(6).

(ii) [Reserved] For further guidance, see §1.1441-5T(e)(6)(ii).

(iii) *Determination of beneficiary or owner's status in the absence of certain documentation.* If a foreign simple trust or foreign grantor trust has provided a foreign simple trust or foreign grantor trust withholding certificate under paragraph (e)(5)(iii) of this section but the payment to such trust cannot be reliably associated with valid documentation from a specific beneficiary or owner of the trust, then any portion of a payment that a withholding agent cannot treat as reliably associated with valid documentation from a beneficiary or owner may be presumed made to a foreign payee. As a result, any payment of an amount subject to withholding is subject to withholding at a rate of 30 percent. Any such payment that is presumed to be made to an undocumented foreign person must be reported on Form 1042-S. See §1.1461-1(c).

(f) [Reserved] For further guidance, see §1.1441-5T(f).

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* The validity of a withholding certificate that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to

one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

(3) [Reserved] For further guidance, see § 1.1441-5T(g)(3).

[T.D. 8734, 62 FR 53452, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72185, 72188, Dec. 31, 1998; 64 FR 73410, Dec. 30, 1999; T.D. 8881, 65 FR 32188, May 22, 2000; 66 FR 18188, Apr. 6, 2001; T.D. 9658, 79 FR 12773, Mar. 6, 2014]

§ 1.1441-5T Withholding on payments to partnerships, trusts, and estates (temporary).

(a) through (b)(2)(ii) [Reserved] For further guidance, see § 1.1441-5(a) through (b)(2)(ii).

(b)(2)(iii) *U.S. complex trusts and U.S. estates.* A U.S. trust that is not a trust described in section 651(a) (see paragraph (b)(2)(ii) of this section) or sections 671 through 679 (see paragraph (b)(2)(iv) of this section) (a U.S. complex trust) is required to withhold under chapter 3 of the Internal Revenue Code (Code) as a withholding agent on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income consists of an amount subject to withholding (as defined in § 1.1441-2(a)) that is, or is required to be, distributed currently. The U.S. complex trust shall withhold when a distribution is made to a foreign beneficiary. The trust may use the same procedures regarding an estimate of the amount subject to withholding as a U.S. simple trust under paragraph (b)(2)(ii) of this section. To the extent an amount subject to withholding is required to be, but is not actually distributed, the U.S. complex trust must withhold on the foreign beneficiary's

allocable share at the time the income is required to be reported on Form 1042-S under § 1.1461-1(c), without extension. A U.S. estate is required to withhold under chapter 3 of the Code on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income consists of an amount subject to withholding (as defined in § 1.1441-2(a)) that is actually distributed. A U.S. estate may also use the reasonable estimate procedures of paragraph (b)(2)(ii) of this section. However, those procedures apply to an estate that has a taxable year other than a calendar year only if the estate files an amended return on Form 1042 for the calendar year in which the distribution was made and pays the underwithheld tax and interest within 60 days after the close of the taxable year in which the distribution was made.

(iv) and (v) [Reserved] For further guidance, see § 1.1441-5 (b)(2)(iv) and (v).

(vi) *Coordination with chapter 4 requirements for U.S. partnerships, trusts, and estates.* To the extent that a U.S. partnership is required to withhold on an amount under chapter 4 with respect to a partner, beneficiary or owner, the partnership, trust, or estate must apply the rules described in § 1.1473-1(a)(5) to determine when it must withhold on the amount under chapter 4. In a case in which withholding applies under chapter 4 to such an amount, see § 1.1441-3(a)(2) to coordinate with withholding that otherwise applies to such an amount under this paragraph (b).

(c) *Foreign partnerships—(1) Determination of payee.* (i) *Payments treated as made to partners.* Except as otherwise provided in paragraph (c)(1)(ii) or (iv) of this section, the payees of a payment to a person that the withholding agent may treat as a nonwithholding foreign partnership under paragraph (c)(3)(i) or (d)(2) of this section are the partners (looking through partners that are foreign intermediaries or flow-through entities) as follows—

(A) and (B) [Reserved] For further guidance, see § 1.1441-5(c)(1)(i)(A) and (B).

(C) If the withholding agent can reliably associate a partner's distributive